



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Mr. Matthew C. G. Boyle
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4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2003-3779

Dear Mr. Boyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182122.

The Bedford Police Department (the "department"), which you represent, received a written request for "all reprimands and other disciplinary actions, and all documentation associated with all internal investigations" of four named police officers. You indicate that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request, a representative sample of which you submitted to this office, is excepted from required disclosure pursuant to section 552.101 of the Government Code.¹ We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor and the comments of one of the officers, which the department has forwarded to us. See Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address the officer's contention that the City of Bedford (the "city") entered into a contract with him in which the city agreed to keep the submitted information confidential. Information is not confidential under the Public Information Act (the "Act") simply because

¹In reaching our conclusion here, we assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”). Consequently, unless the requested information falls within one of the Act’s exceptions to disclosure, it must be released, notwithstanding any contract specifying otherwise.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). In addition, this office has found that the following types of information are protected by privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Having reviewed the submitted information, we agree that the portions we have marked are protected by common law privacy and must be withheld under section 552.101. However, we conclude that none of the remaining information is protected by common law privacy, and it may not be withheld on that basis. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

We note, however, that some of the submitted information may be excepted from disclosure under section 552.117. Section 552.117(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Section 552.117(2) excepts the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code.² We note, however, that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See Gov't Code* § 552.117; *Open Records Decision No. 622 at 4 (1994)* ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).*" (Emphasis added.)); *see also Open Records Decision Nos. 658 at 4 (1998)* (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Pursuant to section 552.117(2), the department must withhold the above-listed information of any individual who was a licensed peace officer at the time this request was received. Pursuant to section 552.117(1), the department must withhold the same information for any current or former employee or official who was not a licensed peace officer at the time this request was received but who elected, prior to the receipt of this request, to keep such information confidential. We have marked the types of information that must be withheld if section 552.117 applies.

Regardless of whether they are excepted under section 552.117, social security numbers may be confidential under federal law. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In addition, we note that the submitted records contain individuals' driver's license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

issued by an agency of this state.” Accordingly, the department must withhold all Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code.

Finally, we note that the submitted information includes e-mail addresses of members of the public. Section 552.137 of the Government Code provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act].” We note that section 552.137 does not apply to a government employee’s work e-mail address or a business’s general e-mail address or website address. Unless the individual members of the public have affirmatively consented to release of their e-mail addresses, the department must withhold the types of e-mail addresses that it has marked. *See* Gov’t Code § 552.137(b).

In summary, the department must withhold the information we have marked as being excepted by section 552.101 in conjunction with the common law right to privacy. Present and former home addresses and telephone numbers, social security numbers, and family member information of any individual who was a peace officer when this request was received must be withheld under section 552.117(2). The same information must be withheld under section 552.117(1) for anyone who was not a peace officer at the time this request was received but who is a current or former employee who elected, prior to the receipt of the request, to keep such information confidential. Social security numbers must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. We have marked the Texas drivers’ license numbers that must be withheld under section 552.130 and the types of e-mail addresses that must be withheld in accordance with section 552.137. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

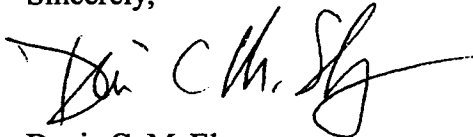
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 182122

Enc. Submitted documents

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(w/o enclosures)